IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4090 of 2004
Date of decision : 7.11.2006.

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Parties Name

Malkit Kaur

..... Appellant

vs.

Bahadur Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. M.L. Saini, Advocate
for the appellant.

Sh. Sidharath Kumar, Advocate
for the respondents.

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S.N. Aggarwal, J.

Elections for the office of Panches in Gram Panchayat, Badali, Tehsil Amloh, had taken place on 29.6.2003. There were in all five posts of Panches, the categorisation of which was as under:-

1. General category 1
2. General category (women) 1
3. Scheduled caste 1
4. Scheduled case (women) 1
5. Backward class 1

Malkit Kaur-appellant, Bahadur Singh-respondent No.1,

Gurmeet Singh-respondent No.4 and Kulwinder Kaur-respondent No.5 had contested the elections in General category, (both men and women). The votes secured by these persons are shown in the following table:-

Kulwinder Kaur-respondent No.5	137 votes
Bahadur Singh-respondent No.1	115 votes
Gurmeet Singh-respondent No.4	114 votes
Malkit Kaur-appellant	88 votes

The Returning Officer counted the votes secured by Kulwinder Kaur-respondent No.5 against the seat of General category and declared her elected in that category. Since, Kulwinder Kaur was considered a General category candidate, Malkit Kaur-appellant was declared elected against the seat reserved for women in General category.

Bahadur Singh-respondent No.1 filed the election petition. The learned Election Tribunal held that Kulwinder Kaur-respondent No.5 and Malkit Kaur-appellant had filed nomination papers against the seat reserved for General category (women) and the votes secured by Kulwinder Kaur cannot be considered against the seat of General category (men). Accordingly, the election petition filed by Bahadur Singh-respondent No.1 was accepted by the learned Election Tribunal, Fatehgarh Sahib vide order dated 17.8.2004 and Bahadur Singh, having secured maximum votes against the seat of General category, was declared elected as Panch against the seat of General category (men).

Since, Kulwinder Kaur-respondent No.5 had secured more

votes than Malkit Kaur-appellant, against the seat reserved for General category (women), therefore, Kulwinder Kaur was declared elected against that seat and the election of Malkit Kaur-appellant was set aside.

Hence, the present appeal by Malkit Kaur-appellant.

The submission of the learned counsel for the appellant was that the election could be set aside only on the grounds described in Section 90 of the Punjab State Election Commission Act, 1994 (in short ' the PSEC Act, 1994'). This Section reads as under :-

> **“90. Grounds for which a candidate other than the returned candidate may be declared to have been elected**.- If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Election Tribunal is of the opinion.-
>
> (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
>
> (b) that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or such other candidate would have obtained a majority of the valid votes;
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> the Election Tribunal shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

It was submitted that no ground was made out under Section 90 of the PSEC Act, 1994 for declaring Bahadur Singh as elected and for setting aside the election of Malkit Kaur-appellant.

This submission has been considered. It needs specific notice that Malkit Kaur had filed her nomination papers against the office reserved for General category (women). Similarly, Kulwinder Kaur had filed nomination papers against that very reserved category seat. The Returning Office committed an error while considering the nomination of Kulwinder Kaur against the seat meant for General category (men). There were two candidates against that post, namely, Bahadur Singh-respondent No.1 and Gurmeet Singh-respondent No.4. Since, Bahadur Singh had secured more votes than Gurmeet Singh in the seat meant for General category, therefore, Bahadur Singh was entitled to be declared elected against that seat. Since, Kulwinder Kaur-respondent No.5 had secured more votes than Malkit Kaur-appellant, therefore, Kulwinder Kaur was entitled to be declared elected against the seat reserved for General category (women).

It may be stated that Kulwinder Kaur could contest against the General category as per the instructions issued by the Government of Punjab and then the votes secured by her could be compared with those of Bahadur Singh. But since, she had filed nomination papers specifically for General category (women), she has no right to compete against the General category candidates. She could only compete with the candidates of General category (women)

Under Section 90 of the PSEC Act, 1994, if the Election Tribunal is of the opinion that in fact the appellant or such other

candidate received a majority of valid votes, then such an unreturned candidate can be declared elected. In the present case, Bahadur Singh-respondent No.1 had secured more votes for the seat against which he had contested, namely, General category. Therefore, he was entitled to be declared elected as Panch against that seat. Similarly, Kulwinder Kaur had secured more votes against the seat reserved for General category (women) than Malkit Kaur-appellant. Therefore, Kulwinder Kaur was entitled to be declared elected against that seat.

The order passed by the learned Election Tribunal is in accordance with the provisions of Section 90 of the PSEC Act, 1994. Therefore, it does not suffer from any illegality or infirmity.

There is no merit in the present appeal and the same is dismissed.

(S.N.Aggarwal)
Judge

7.11.2006.
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